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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/843,614
Filing Date: April 25, 2001
Appellant(s): GEBHARDT ET AL.

Lucinda Price, Reg. No. 42,270
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/04/2005 appealing from the Office action mailed 05/31/2005.

(1) Real Party in Interest

The real party in interest of the above-captioned patent application is the assignee, Wink Communications, Inc.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The statement of the status of Amendments contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US Patent 6502242	Howe et al.	December 31, 2002
US Patent 6195661	Filepp et al.	February 27, 2001
US Patent 6269374	Chen et al.	July 31, 2001
US Patent 6496981	Wistendahl et al.	December 17, 2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9-13, 17-30, 33-36, 40-41 rejected under 35 U.S.C. 103(a) as being unpatentable over Howe et al. (US Patent 6502242) hereinafter referred to as Howe, in view of Filepp et al. (US Patent 6195661), hereinafter referred to as Filepp.

With respect to Claim 1, Howe discloses a computer implemented method of updating an interactive application broadcast from a broadcast system to a reception device over a transmission medium, (Column 5 Lines 5-25) the method comprising: receiving at the broadcast system a broadcast signal including at least one information of a first interactive application; (Column 12 Lines 10-25) selecting a second interactive application, and broadcasting information of the second interactive application to the reception device in place of at least some of the information of the first interactive application, for execution of the second interactive application by the reception device; (Column 12 Lines 55-60) receiving at the broadcast system in the broadcast signal additional information regarding the first interactive application; and broadcasting from the broadcast system selected additional information (Column 5 Lines 45-50) to the reception device, for execution of the second interactive application in conjunction with the additional information.

With respect to Claim 2, Howe discloses the method of claim 1, wherein the second interactive application is a customized version of the first interactive application. (Column 3 Lines 55-60, Column 7 Lines 40-45, Column 9 Lines 50-65)

With respect to Claim 3, Howe discloses the method of claim 1, wherein the first interactive application is broadcast over a first transport protocol, and the second interactive application is broadcast over a second transport protocol. (Column 3 Lines 55-60, Column 7 Lines 40-45, Column 9 Lines 50-65)

With respect to Claim 4, Howe discloses the method of claim 1, wherein the first interactive application is broadcast, over an analog transport protocol, and the second interactive application is broadcast over a digital transport protocol. (Column 3 Lines 55-60)

With respect to Claim 5, Howe discloses the method of claim 4, wherein the analog transport protocol is the vertical blanking interval of an analog broadcast television signal. (Column 3 Lines 55-60)

With respect to Claim 6, Howe discloses the method of claim 4, wherein the digital transport protocol is an MPEG signal. (Column 9 Lines 50-65)

With respect to Claim 9, Howe discloses The method of claim 4, wherein broadcasting the additional information to the reception device further comprises

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converting the updated information from a format compatible with the analog transport protocol to a format compatible with the digital transport protocol. (Column 8 Lines 1-30, Column 10 Lines 10-20)

With respect to Claim 10, Howe discloses the method of claim 1, wherein broadcasting selected updated additional information to the reception device further comprises: selecting an additional information that is an update of a corresponding information of the second interactive application. (Column 25 Lines 20-25, Column 26 Lines 40-50)

With respect to Claim 11-13, Howe substantially discloses the method of claim 10, wherein additional information that is an update of the corresponding information of the second interactive application is received and broadcast. (Column 25 Lines 20-25, Column 26 Lines 40-50)

With respect to Claim 17, Howe discloses the method of claim 1, further comprising: receiving at the broadcast system in the broadcast signal, control information for controlling execution of the second interactive application at the reception device; and broadcasting the control information to the reception device. (Column 21 Lines 20-65, Column 19 Lines 25-60)

With respect to Claim 18, Howe discloses a system for updating an interactive application broadcast from a broadcast system to a reception device over a

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transmission medium, the system comprising: a code detector adapted to receive a broadcast signal and identify codes in the signal that relate to a change in a state of a first interactive application, and that provides outputs signals indicative of the change of state (Column 22 Lines 60-65); a server that maintains state information (Column19 Lines 60-65) for the first interactive application in response to the output signals from the code detector, and in response to the state of the first interactive application, outputs commands to start or stop the output of updated information of the interactive application; a code reader, (Column19 Lines 60-65, Column 22 Lines 60-65) adapted to read interactive application codes of an interactive application and to identify information of the first interactive application that are updates of corresponding information of a second interactive application stored a broadcast server, and communicatively coupled to the server, that selectively provides the updated information to the broadcast server in response to the commands from the server ; and a broadcast server (Column19 Lines 60-65) that broadcasts the second interactive application to reception devices for execution by the reception devices in place of the first interactive application, and selectively broadcasts the updated information to the reception devices, for execution of the second interactive application in conjunction with the updated information. Examiner notes that the content provider (Item 41 and 42) is able to communicate directly with network service provider (Item 10) and hence also with STB (Item 100).

With respect to Claim 19, Howe discloses the system of claim 18, wherein the code detector identify codes that relates to a change in the state of an interactive application by detecting changes in an interactive application identification code. (Column 4 Lines 20-30, Column 18 Lines 1-15)

With respect to Claim 20, Howe discloses the system of claim 18, wherein the code detector identifies codes that relate to a change in the state of an interactive application by detecting a new interactive application identification code. (Column 12 Lines 20-25, Column 17 Lines 20-65)

With respect to Claim 21, Howe discloses the system of claim 20, wherein the server in response to an output signal of the code detector indicating a new interactive identification code, commands the code reader to start providing updated information to the broadcast server. (Column 25 Lines 20-35)

With respect to Claim 22, Howe discloses the system of claim 18, wherein the code detector identifies codes that relate to a change in the state of an interactive application by detecting an absence of an interactive application identification code in the broadcast signal for a predetermined amount of time. (Column 12 Lines 40-45)

With respect to Claim 23, Howe discloses the system of claim 22, wherein the server in response to an output signal of the code detector indicating an absence of the interactive identification code for the predetermined time (Column 12 Lines 40-45),

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commands the code reader to stop providing updated information of the second interactive application to the broadcast server. (Column 12 Lines 60-65)

With respect to Claim 24, Howe discloses the system of claim 18, wherein the code reader stores updated information prior to receiving a command from server to provide updated information to the broadcast server. (Figure 6, Column 18 Lines 20-60, Column 19 Lines 30-50, Column 20 Lines 1-40)

With respect to Claim 25, Howe discloses the system of claim 18, wherein the code detector detects commands for controlling execution of the first interactive application in a preserved portion of the broadcast signal, and the code reader provides the commands to the broadcast server for broadcasting to the reception device. (Column 12 Lines 60-65)

With respect to Claim 26-30 and Claims 33-36 the applicant discloses substantially the same limitations as described in Claims 1-17. Claim 26-30 and Claims 33-36 are rejected on the same basis as Claims 1-17.

With respect to Claims 40-41 the applicant describes a computer implemented method and computer readable medium with the same limitation as Claim 1. Claims 40-41 are rejected on the same basis as Claim 1.

However with respect to Claims 1-6, 9-13, 17-30, 33-36, 40-41, while Howe discloses providing update information to the second interactive application, Howe does not disclose the method of storing and updating records for the interactive applications. With respect to Claims 10-13 and Claims 22-25 Howe does not disclose the method wherein selecting an additional record that is an update of a corresponding record of the second interactive application further comprises: storing for each record of the first interactive application a current sequence number; determining whether a sequence number for a received additional record of the first interactive application exceeds the current sequence number for the record; and responsive to the determination that the sequence number exceeds the stored sequence number, selecting the additional record, and adjusting the stored sequence number for the additional record to the received sequence number. Howe does not disclose the method wherein broadcasting a selected additional record to the reception device further comprises: broadcasting an updated additional record only if the additional record is compatible with a corresponding record in the second interactive application. Furthermore, while Howe discloses of storing the updates in various types of memory storage of the interactive server, Howe does not specifically mention the concept of caching records.

Filepp discloses a method for locating and updating application records in an interactive-services database, wherein the information on the interactive application is broken down into objects and elements, with each object record header providing data regarding the objects identification, anticipated use, association to other objects, its

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length, its version and its currency. (Column 6 Lines 40-50, Column 28 Lines 25-45) Filepp discloses of an object interpreter and object processor that determines whether the received update object is of a certain type and will look for the matching object on the database, thereby ensuring compatibility of the updates records. (Column 25 Lines 55-65, Column 26 Lines 1-65) Filepp discloses the concept of caching update records (Column 27 Lines 20-65).

Howe and Filepp are analogous art because they both present concepts and practices regarding delivery of content for interactive applications over broadcasting networks. It is respectfully suggested that it would have been obvious to a person of ordinary skill in the art to combine the teachings of Filepp with regards to locating, object type matching, version checking, currency checking, caching and updating interactive application records into the methods of Howe. The suggested motivation would be, as Filepp suggests, so that the network can supply information and transactional support to the user at minimal cost with a minimal response time.

Therefore it would have been obvious to combine the teachings of Filepp into the method of Howe in order to arrive at the invention as described in Claims 1-6, 9-13, 17-30, 33-36, 40-41.

Claims 14-16, 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howe et al. (US Patent 6502242) hereinafter referred to as Howe, in view of Filepp

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et al. (US Patent 6195661), hereinafter referred to as Filepp, further in view of Chen et al. (US Patent 6269374), hereinafter referred to as Chen.

With respect to Claims 14-16 and Claims 37-39, the combined teachings of Howe and Filepp, when applied together, are enough to disclose the invention as described by the applicant.

However the combined teachings of Howe and Filepp do not disclose matching a first checksum of the non-content portions of the additional records of the first interactive application with a first checksum on the non-content portions of the corresponding records containing variable content. The combined teachings of Howe and Filepp do not disclose matching a second checksum of static portions of records of the first interactive application with a second checksum of static portions of records of the second interactive application.

Chen discloses a method and apparatus for calculating checksums of data structures. Chen teaches that it is advantageous to calculate the checksum using the static portion of the data structure, and also calculate a separate checksum for the variable contents of the data structure. (Figure 4, Column 1 Lines 35-45, Column 2 Lines 30-35, Column 5 Lines 40-65, Column 6 Lines 20-65)

Howe, Filepp and Chen are analogous art because they present concepts and practices regarding content delivery for interactive applications. It is respectfully suggested that it would have been obvious to a person of ordinary skill in the art to combine the teachings of Chen with regards to calculating checksums for interactive application records into the combined methods of Howe and Filepp. The suggested

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motivation would be, as Chen suggests, so that the checksum methods may be used for error checking may be implemented without degradation in quality of service. (Column 2 Lines 10-20, Column 9 Lines 30-40)

Therefore it would have been obvious to combine the teachings of Chen into the combined method of Howe and Filepp in order to arrive at the invention as described in Claims 14-16 and Claims 37-39.

Claims 7,8,31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howe et al. (US Patent 6502242) hereinafter referred to as Howe, in view of Filepp et al. (US Patent 6195661), hereinafter referred to as Filepp, further in view of Wistendahl (US 6496981 B1), hereinafter referred to as Wistendahl.

With respect to Claims 7,8,31 and 32, the combined teachings of Howe and Filepp, when applied together, are enough to disclose the invention as described by the applicant.

However the combined teachings of Howe and Filepp do not disclose the method of using a digital transport protocol consisting of an ATVEF or HTTP signal.

Wistendahl discloses a system for converting media content for interactive TV , wherein the system is able to accept HTTP or HDTV signals. (Column 1 Lines 45-60, Column 3 Lines 30-40).

Howe, Filepp and Wistendahl are analogous art because they present concepts and practices regarding content delivery for interactive applications. It is respectfully

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suggested that it would have been obvious to a person of ordinary skill in the art to combine the teachings of Wistendahl with the combined methods of Howe and Filepp in order to accept HTTP or HDTV signals for the interactive applications. The suggested motivation would be, as Wistendahl suggests, so that media content is converted for interactive TV use without locking it in to any particular delivery system or display platform. (Column 2 Lines 30-40)

Therefore it would have been obvious to combine the teachings of Wistendahl into the combined method of Howe and Filepp in order to arrive at the invention as described in Claims Claims 7,8,31 and 32.

(10) Response to Argument

10.1 Pertinent Disclosures from Reference(s)

The Examiner highlights the following disclosure(s) from Howe regarding the 'interactive button' used for selecting an interactive application:

'It is yet another object of the present invention to permit the Content Provider to transmit with the identifying code or callback address additional information, such as information to be used at the subscriber site to generate a screen image indicating the availability of additional content from the video service provider.' (Howe – Column 5 Lines 45-50)

'...the ICA serves as a complete or partial basis for the STB 100 of a subscriber 70 to generate a signal representing a "button" for

inclusion on the screen of the television 80 of subscriber 70. The ICA is inserted in the program such that the interactive button may be generated by a subscriber's STB 100 to appear at the desired time on the screen of a subscriber 70 tuned to that program..' (Howe – Column 12 Lines 10-15)

'...In FIG. 4A at 405 an interactive callback address package (ICAP) is established for an interactive application associated with a given program. This ICAP includes an ICA and may also include customized button information. This customized information may include: a) type(s) of button(s); b) characteristics of button(s); c) location on the screen of button(s); d) text of button(s); and e) other unique characteristics of button(s)...' (Howe – Column 15 Lines 15-25)

Furthermore, the Examiner notes the following from Howe regarding a set-top box (STB):

'....A STB may also be capable of performing other functions, such as: (1) inserting alphanumeric or graphical information into the video stream in order to "overlay" that information on the video image...' (Howe – Column 2 Lines 5-10)

10.2 Discussion of the Rejections under 35 U.S.C 103

The Examiner notes that the claimed invention is best described by the Applicant (in the Applicant Specifications Page 5 Lines 10-25) as dealing with 'handling partial changes in the contents of interactive application'. While the claims recite a first interactive application and a second interactive application, the said applications are really referring to one and the same application, one (the first application) being in a different state (instance) than the other (second application).

In combining the two references, the Examiner notes that Howe disclosed the broadcasting environment for providing interactive applications, while Filepp disclosed partially updating interactive content in a broadcast environment such as Howe's. Thus, the combination of Howe and Filepp disclose the features of the claimed invention.

The Applicant presents the following argument(s) [in italics]:

'Appellants submit that these elements of claim 1, including "selecting a second interactive application, and broadcasting records of the second interactive application to the reception device in place of at least some of the records of the first interactive application" are simply not recited in Howe.'

The Examiner respectfully disagrees with the Applicant. Howe presents an interactive button (Howe – Column 12 Lines 10-15) on the subscriber screen in order to allow the subscriber to input a selection an interactive application. The interactive button is used to indicate 'additional content'.

The Examiner notes that a person of ordinary skill in the art would recognize the interactive button to be similar to a program-generated graphical element that is commonly used in interactive object-oriented applications. Howe describes the interactive button as having attributes (i.e. type, description, unique characteristics), textual information (commonly known as 'labels'), and/or icons (commonly known as graphical bitmap images). The interactive button is generated and inserted into the broadcast signal by the STB before being presented to the subscriber.

As presented in the Advisory Action dated 10/04/2005, the screen image 'icon' or 'button' should be considered as an interactive application. Howe describes an interactive session as a two-way communication relationship (Howe – Column 1 Lines 55-60). Since 1) the interactive button presents textual information to the subscriber, and 2) the interactive button is able to accept input from and respond to the user, the requirement for two-way communication is fulfilled by said screen image 'icon' or 'button'. Thus, there exists an interactive session between the interactive button and the subscriber.

The Applicant suggests that *'...neither the callback address nor the icon of Howe is an interactive application' as claimed. In fact, the callback address (ICA) and the icon are only means to an interactive program of Howe. ... the callback address and the icon of Howe are not interactive, but rather one-way mediums. As such, Howe cannot recite switching between two interactive applications.'*

The Examiner respectfully disagrees with the Applicant. While it is true that the interactive button is a 'means' of transitioning to another interactive application, this characteristic does not disqualify the interactive button from being considered an interactive application. The Examiner presents for consideration the case of a Web portal home page, wherein the user is requested to perform mouse-click to access other applications. While the portal page is only a means to another interactive application, this characteristic does not disqualify the portal page from being considered an interactive application.

The Examiner further notes that, while Howe seems to disclose a single interactive button, Howe disclosed that 1) the STB continually listens for the ICA (Howe – Column 17 Lines 60-65), 2) there could be multiple interactive applications , as indicated by multiple content providers (Howe – Column 7 Lines 60-65), and 3) the presence of new interactive applications could be signaled to the STB at any time via purely automated electronic means (Howe – Column 18 Lines 25-30). Thus, in the possibility of having multiple interactive buttons displayed further support the similarity of Howe's disclosure with a web portal page or menu screen. These portions from Howe also disclose the possibility of dynamically updated text information on the interactive button.

The Applicant presents the following argument(s) [*in italics*]:

'Howe, in fact, clearly discloses switching between the two different mediums, e.g., from a program channel being viewed to a different interactive channel, again, not switching between two interactive applications.'

The Examiner notes that Howe's disclosure was not limited to switching from a program channel to an interactive channel, but also disclosed switching between two interactive applications. The process of switching involves displaying an interactive button with text information, a user indicating selection of said button, and finally presentation of the desired interactive application.

The Applicant presents the following argument(s) *[in italics]*:

Appellants submit that there is simply no specific indication in the Action that the icon or ICA of Howe (the alleged first interactive application) has some records that may be replaced by records of the interactive program of Howe.

The Examiner respectfully disagrees with the Applicant. The Examiner notes that the 'records' in Claim 1 are embodied in a broadcast signal and are processed by the system and the receiving device(s) as broadcast signals. Thus the scope of Claim 1 should be interpreted to indicate replacement of a first broadcast signal containing information about a first interactive application with a second broadcast signal with information regarding a second interactive application. Howe is clearly replacing one signal with another signal.

Even so, the Examiner has interpreted the Claims to include some unknown relationship between the records contained in the broadcast signals of the first

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interactive application and the second interactive application. The Examiner notes that Howe disclosed an interactive button containing text information, and also described said interactive button as a screen 'icon'. (Howe – Column 4 Lines 37). Howe uses the interactive button to indicate to the subscriber the availability of an interactive program. (Howe – Column 4 Lines 37-38) Thus the Examiner interprets said text information on the interactive button to relate to the second interactive application, including commonly used text descriptions such as the title or name of the second interactive application, followed by a suggestion to 'Click Here for more details'. Screen icons work in a similar fashion as buttons and can be even more efficient in describing the second interactive application, (e.g. an icon consisting of a sun and clouds together with a temperature reading). At any rate, upon clicking on the said interactive button or screen icon, the broadcast signal from the second interactive application replaces the information from the first broadcast signal [for the interactive button].

The Applicant presents the following argument(s) [in italics]:

Howe does not describe or even suggest the element of a code reader, adapted to read interactive application codes of an interactive application and to identify records of the first interactive application that are updates of corresponding records of a second interactive application stored in a broadcast server.

With regards to the code reader in Claim 18, in Column 19 Lines 28-35 Howe disclosed of an interactive server that acts as a code reader for identifying interactive

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content. Alternatively, since the claimed invention is dealing with broadcast signals, the STB may also be considered as a code reader, in the sense that the STB is able to replace the interactive button with an interactive application and is therefore able to distinguish one from the other. Furthermore, as mentioned previously, the STB is also 'listening' for new interactive content and is thus able to recognize signals regarding said interactive content.

The Examiner notes that Howe also disclosed of a storage databases and other mediums (Howe – Column 19 Lines 15-17, Column 20 Lines 7-12) wherein the interactive content may be stored according to an application ID (Howe – Column 19 Lines 13-20) and of performing data storage management (Howe – Column 20 Lines 40-45).

In Column 19 Lines 28-35 Howe also disclosed that new interactive applications may be associated with pre-developed content. Thus, Howe disclosed identifying records of a first interactive application and also established correspondence of said first interactive application with a second [pre-stored] interactive application. In Column 19 Lines 55-60 Howe disclosed of locally originating interactive programs and nationally originating programs, said programs being linked by the interactive server. Here, Howe providing suggestions that updates may be required for said interactive applications.

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However, with respect to Claims 1, 18, and 40 while Howe disclosed 1) a first interactive application, and 2) correspondence to another related second interactive application, and 3) the structural elements for processing (and replacing) broadcast signals and performing data management functions, Howe did not clearly disclose partially updating corresponding records between the applications. With respect to Claims 10-13 and Claims 22-25 Howe did not disclose the method wherein selecting an additional record that is an update of a corresponding record of the second interactive application. Regarding Claim 24, Howe did not disclose caching update records.

Filepp disclosed a method for selecting records, identifying updates and partially updating application records in an interactive-services database, wherein the information on the interactive application is broken down into objects and elements, with each object record header providing data regarding the objects identification, anticipated use, association to other objects, its length, its version and its currency. (Filepp - Column 12 Lines 50-55, Column 13 Lines 30-35, Column 23 Lines 20-35, Column 26 Lines 60-65) Filepp disclosed of checking the currency and state of objects in the interactive application. (Filepp – Column 27 Lines 10-15, Column 28 Lines 35-45) Filepp disclosed event processing according to the state of the interactive application. (Filepp – Column 22 Lines 40-55) Filepp discloses of an object interpreter and object processor that determines whether the received update object is of a certain type and will look for the matching object on the database, thereby ensuring compatibility of the

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updates records. (Filepp - Column 25 Lines 55-65, Column 26 Lines 60-65) Filepp discloses the concept of caching update records (Column 27 Lines 20-25).

The Examiner notes the similarity between Filepp's disclosure and the Applicant's claimed invention - that is, to provide updated interactive content at the user's reception device (Filepp - Column 27 Lines 60 thru Column 28 Lines 5) over the course of building the screens presented to the user (Filepp - Column 28 Lines 65) via broadcast networks (Filepp - Column 7 Lines 10-25).

With respect to Claim 18, Filepp disclosed identifying codes that relate to a change in a state of an interactive application and providing output indicative of the change of state (Filepp - Column 27 Lines 10-15, Column 28 Lines 35-45).

Thus, it would have been obvious to a person of ordinary skill in the art to use the interactive button of Howe (via the means of the ICA and application ID, or alternatively, the text information) to indicate the presence of updates [additional content] , and combine the teachings of Filepp regarding updates to interactive content, in order to 'handle partial changes in the contents of interactive application' as described in the claimed invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Greg Bengzon,

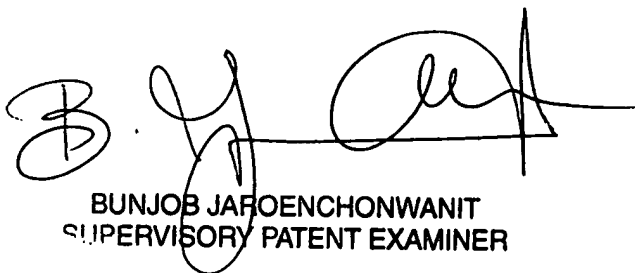
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